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Issues with respect to article 4 of Annex II to the United Nations Convention on the Law of the Sea

Background paper prepared by the Secretariat

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I. Introduction

1. The tenth Meeting of States Parties to the United Nations Convention on the Law of the Sea, convened at United Nations Headquarters from 22 to 26 May 2000, discussed the issue of the 10-year time limit under article 4 of Annex II to the United Nations Convention on the Law of the Sea[1] for coastal States to submit the scientific and technical data delineating the outer limit of their continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf.

2. It was pointed out during the discussion that, in view of the lack of necessary funds and technical expertise in certain developing countries, particularly the least developed ones, the Meeting of States Parties should consider means by which assistance could be provided with respect to the scientific and technical expertise required by those States preparing submissions, to enable them to comply with the 10-year time limit required by the Convention, or it should consider an extension of the time limit. The Meeting expressed general support for the concerns voiced by developing States regarding the difficulty of complying with the 10-year time limit and decided to include in the agenda for the eleventh Meeting an item entitled "Issues with respect to article 4 of Annex II to the United Nations Convention on the Law of the Sea". It requested the Secretariat to prepare a background paper on the matter.

3. In response to that request, the Secretariat has prepared the present document, which addresses the issue of the time limit as well as the question of assistance with respect to the scientific and technical aspects of the preparation of submissions.

II. States for which the 10-year time limit expires in the years 2004-2008

4. The United Nations Convention on the Law of the Sea entered into force on 16 November 1994. At the time of its entry into force, 67 States had become Parties to the Convention (see A/56/58, annex I).

5. Of the 67 States for which the Convention entered into force on that date, 14 could possibly meet the legal and geographic requirements to take advantage of the provisions of article 76 regarding an extended continental shelf, based on the assessment made during the Third United Nations Conference on the Law of the Sea.[2]

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[1] Article 4 of Annex II reads as follows:

"Where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of the Convention for that State. ..."

[2] From the map illustrating the various formulae for the definition of the continental shelf that was prepared at the request of the Third United Nations Conference on the Law of the Sea in 1978 with the assistance of experts from the Lamont-Doherty Geological Observatory of Columbia University, the International Hydrographic Organization (IHO) and the Intergovernmental Oceanographic Commission (IOC) (*Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IX (United Nations publication, Sales No. E.79.V.3), Documents of the Conference, document A/CONF.62/C.2/L.98/Add.1), the

6. Within the group of wide-margin States, identified on the basis of information provided to UNCLOS III, there are three signatories to the Convention — Canada, Denmark and Madagascar — that have not yet ratified it, and two States — Ecuador and the United States of America, that have neither signed nor acceded to it. There is therefore none of these countries currently has a date upon which the 10-year time limit would expire.

7. During the five-year period from 2004 to 2008, of the current States Parties to the Convention that could tentatively be identified as possibly having a continental shelf extending beyond 200 nautical miles, the 10-year time limit will expire for the following States:

Expiration of 10-year time limit

	2004	*2005*	*2006*	*2007*	*2008*
Developing States	Angola Brazil Fiji Guinea Guyana Indonesia Mauritius Mexico Micronesia Namibia Seychelles Uruguay	Argentina India	Myanmar		South Africa Suriname
Developed States	Australia Iceland		France Ireland Japan New Zealand Norway	Portugal Russian Federation Spain United Kingdom	

8. The figure of about 30 countries may be a conservative estimate. According to some members of the Commission on the Limits of the Continental Shelf, the number of States that may have the geographic and geological prerequisites to establish an extended continental shelf along at least some portion of their coastline could exceed the estimates based on the map produced in 1978. However, the exact number of such States can only be known after the States make their submissions to the Commission. It is only after consideration of the submissions that the Commission will issue recommendations regarding the outer limits of their continental shelf on the basis of which the coastal States will establish the continental shelf limits which "shall be final and binding" (article 76 (8) of the Convention).

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following 33 States, both parties and non-parties to the Convention, could be identified as possibly having a continental shelf extending beyond 200 nautical miles: Angola, Argentina, Australia, Brazil, Canada, Denmark, Ecuador, Fiji, France, Guinea, Guyana, Iceland, India, Indonesia, Ireland, Japan, Madagascar, Mauritius, Mexico, Micronesia (Federated States of), Myanmar, Namibia, New Zealand, Norway, Portugal, Russian Federation, Seychelles, South Africa, Spain, Suriname, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

III. Postponement of the initial election of the members of the Commission

9. According to article 2, paragraph 2, of Annex II to the Convention, the initial election of the members of the Commission should have taken place "as soon as possible but in any case within 18 months after the date of entry into force of this Convention", that is, by 16 May 1996.

10. However, the Third Meeting of States Parties to the Convention, held in New York from 27 November to 1 December 1995, decided that the election of members of the Commission would be postponed until March 1997 — by 10 months. The delay of the first election afforded an opportunity for additional States to become parties to the Convention and to nominate candidates for membership of the Commission. In fact, the postponement of the elections allowed 31 additional countries to accede to the Convention, and 8 among them nominated candidates who were elected and are currently serving on the Commission.

11. As a measure to offset any difficulty that might be caused to States by the postponement of the election of the Commission, a proviso was agreed upon by which, "should any State which is already a Party to the Convention by 16 May 1996 be affected adversely in respect of its obligations under article 4 of Annex II to the Convention as a consequence of the change in the date of the election, States Parties, at the request of such a State, would review the situation with a view to ameliorating the difficulty in respect of that obligation" (SPLOS/5, para. 20).

12. The Ministry of Foreign Affairs of the Republic of Seychelles has already addressed a note verbale to the Secretary-General of the United Nations with regard to the extension of time on submissions to the Commission on the Limits of the Continental Shelf. The Government of Seychelles is of the opinion that it was adversely affected by the late election of members of the Commission, and thus requests that consideration be given to an extension of time in which to submit particulars of the outer limits of its continental shelf to the Commission. In this regard the Government referred to the above-mentioned decision of the Third Meeting of States Parties. The Secretariat has forwarded this request to the President of the Meeting of States Parties (SPLOS/66).

13. Postponement of the first election of the members of the Commission was not the first such action undertaken by the Meeting: the first election of the judges of the International Tribunal for the Law of the Sea was postponed by the Meeting for over 14 months. According to the Convention, the first election of the members of the Tribunal was to be held "within six months of the date of entry into force of this Convention,"[3] i.e. before 16 May 1995.

14. However, the first Meeting of States Parties (21-22 November 1994) was an "ad hoc" meeting convened in accordance with article 319, paragraph 2 (e), of the Convention and the recommendation of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea.[4]

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[3] Article 4 (3) of annex VI to the Convention.

[4] See report of the first Meeting (SPLOS/3, para. 1) and LOS/PCN/L.115/Rev.1, para. 43. Representatives of the following States Parties attended the Meeting: Australia, Bahamas,

15. The only purpose of this "ad hoc" meeting was to postpone the elections of the members of the Tribunal; other items on its agenda were deferred.[5] On the recommendation of the Preparatory Commission, contained in the statement by the Chairman,[6] the Meeting decided that:

> "(a) Having regard to the recommendations of the Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea, there would be a deferment of the first election of the members of the Tribunal. The date of this first election of all 21 members would be 1 August 1996. That would be a one-time deferment;"

16. It is worth noting that the recommendation of the Preparatory Commission to defer the first election of the Tribunal was made "[b]earing in mind the desire to achieve universal participation in the Convention".[7] The postponement of the first election of the members of the Commission on the Limits of the Continental Shelf was made for basically the same reason and in the same legal context.

17. Another point discussed at the first Meeting of States Parties was the question of decision-making procedures, which might also be borne in mind during the current consideration of the possible extension of the 10-year time limit for submissions to the Commission. The Meeting decided to amend the draft rules contained in document SPLOS/2, in particular those relating to observers (rule 15), election (rule 22) and general agreement (rule 61).[8] Rule 61 entitled "General Agreement" was adopted as follows:

> "Except as otherwise provided in the Convention and, in particular, without prejudice to the provisions of articles 155 and 312 of the Convention, the following provisions shall apply for decision-making:
>
> (a) The Meeting should conduct its work on the basis of general agreement;

Bahrain, Barbados, Botswana, Brazil, Cape Verde, Costa Rica, Cuba, Cyprus, Egypt, Fiji, Germany, Guyana, Honduras, Iceland, Indonesia, Jamaica, Kenya, Kuwait, Mali, Malta, Marshall Islands, Mexico, Micronesia (Federated States of), Namibia, Nigeria, Oman, Paraguay, Philippines, Senegal, Sri Lanka, Saint Lucia, Sudan, Togo, Tunisia, Uganda, United Republic of Tanzania, Uruguay, Viet Nam, Yemen, Yugoslavia and Zimbabwe. Attendance was recorded on the basis of a roll-call at the commencement of the Meeting on 21 November 1994 and the credentials submitted to the Secretariat (ibid., para. 4). The Meeting elected Ambassador Satya N. Nandan (Fiji) as its President by acclamation and decided to defer consideration of the election of the other officials. The Meeting decided that it would provisionally apply the provisional rules of procedure contained in document SPLOS/2, which followed the rules generally applicable to conferences and meetings under the aegis of the United Nations.

[5] The Meeting considered its provisional agenda (SPLOS/1) and decided not to deal with items 5, 6 and 9 at that time. Items 5, 6 and 9 of the provisional agenda were as follows:

5. Election of Vice-Presidents.
6. Appointment of the Credentials Committee.
9. Consideration of the subject matter referred to in the report of the Preparatory Commission under paragraph 10 of resolution I containing recommendations regarding practical arrangements for the establishment of the International Tribunal for the Law of the Sea.

[6] LOS/PCN/L.115/Rev.1, para. 43.

[7] Ibid, para. 43.

[8] SPLOS/3, para. 11.

(b) It may proceed to a vote in accordance with rule 64 only after all efforts at achieving general agreement have been exhausted;

(c) Decisions to be taken on the one-time deferment of the election of the members of the Tribunal in accordance with article 4, annex VI, of the Convention, shall be by consensus."

18. What deserves special attention here is the expressed desire of the States Parties to act by "general agreement", that is, to take decisions on important issues by consensus. This rule also states that it is "without prejudice" to the provisions of article 312, which is entitled "Amendment". The same rule contains the provision as to how the decision of the Meeting regarding the deferment of the election of the members of the Tribunal should be taken: "by consensus". These two points expressed in the same rule tell us that the deferment of the election was a substantive issue requiring consensus, but not requiring a formal amendment to the Convention in accordance with its article 312.

IV. Procedures that may be considered in case the 10-year time limit is to be extended

19. The Commission was established by the Convention and is governed by its provisions, including the provision which sets the 10-year time limit for States to make their submissions to the Commission. At this point in time, a change in the provision regarding the 10-year time limit — a provision which is of direct relevance to the specific rights and obligations of the States Parties — may require an amendment to the Convention in accordance with its article 312, entitled "Amendment", or article 313, "Amendment by simplified procedure" — both ways seemingly appropriate in the case of the 10-year time limit.

20. Article 312, paragraph 1, provides that:

"After the expiry of a period of 10 years from the date of entry into force of this Convention, a State Party may, by written communication addressed to the Secretary-General of the United Nations, propose specific amendments to this Convention, other than those relating to activities in the Area, and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within 12 months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference."

21. The date the Convention provides for amendments to it to be proposed — 16 November 2004 — coincides with the date of expiration of the 10-year time limit for the first 13 of the States mentioned above with a probable extended continental shelf. Therefore an amendment to extend the time limit by convening an amendment conference may prove to have been made too late to help those States that will be the first for which the time limit runs out, in 2004.

22. The Convention also provides for an amendment procedure in article 313, entitled "Amendment by simplified procedure". The article reads as follows:

"1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose an amendment to this Convention,

other than an amendment relating to activities in the Area, to be adopted by the simplified procedure set forth in this article without convening a conference. The Secretary-General shall circulate the communication to all States Parties.

"2. If, within a period of 12 months from the date of the circulation of the communication, a State Party objects to the proposed amendment or to the proposal for its adoption by the simplified procedure, the amendment shall be considered rejected. The Secretary-General shall immediately notify all States Parties accordingly.

"3. If, 12 months from the date of the circulation of the communication, no State Party has objected to the proposed amendment or to the proposal for its adoption by the simplified procedure, the proposed amendment shall be considered adopted. The Secretary-General shall notify all States Parties that the proposed amendment has been adopted."

23. The simplified procedure for amending the Convention envisaged in article 313 is different from the course of action stipulated by article 312, inter alia, in one aspect very important to the consideration of the time limit: it can be used at any time, even before the expiration of the 10-year period required for the amendments proposed in accordance with article 312. This provision was included in the Convention because "it is not subject to the 10-year moratorium which applies in cases coming within the scope of article 312".[9] However, the application of this procedure will require consensus: according to paragraph 2 of article 313, if any State Party objects to the proposed amendment within 12 months of its circulation, the amendment shall be considered rejected.

24. Other procedures for implementation of the Convention were undertaken previously: there are two agreements directly related to the Convention, one of which was adopted before its entry into force, and the other after it.

25. The Agreement relating to the implementation of Part XI of the Convention was negotiated and signed before the Convention entered into force. Procedurally, this was effected by the adoption of United Nations General Assembly resolution 48/263 of 28 July 1994, by which the Agreement was opened for signature.[10] It should be borne in mind, however, that this procedure was used before the entry into force of the Convention.

26. Another international instrument closely related to the Convention, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, was concluded by an intergovernmental conference after the Convention had entered into force and shall be interpreted and applied in the context of and in a manner

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[9] *United Nations Convention on the Law of the Sea: A Commentary*, vol. V, Myron H. Nordquist, Editor-in-Chief, Shabtai Rosenne and Louis B. Sohn, Volume Editors) (Martinus Nijhoff Publishers, 1989), para. 313.3, p. 269. See also documents of the Third United Nations Conference on the Law of the Sea FC/21/Rev.1 and FC/21/Rev.1/Add.1: "Note by the President on Final Clauses", reproduced in R. Platzoder (ed.), *Third United Nations Conference on the Law of the Sea*, Documents of the Conference (Oceana Publications, 1982), vol. XII, pp. 410-424.

[10] The process and legal ramifications are set out in the introduction to the Agreement; see United Nations publication, Sales No. E.97.V.10, pp. 208-213. The text of the Agreement on Part XI is contained in the annex to resolution 48/263.

consistent with the Convention. Unlike the Agreement on Part XI, this instrument does not state that certain provisions of the Convention no longer apply, but rather develops the relevant provisions of the Convention to ensure the long-term conservation and sustainable use of these stocks through the effective implementation of those provisions.

27. It should be noted that outside UNCLOS there have been several examples where the States parties to a treaty have effectively modified the provisions of the treaty by a "subsequent agreement". The Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES Convention) was so modified by a resolution of the Conference of the Parties in 1986, despite an amendment procedure having been included in the Convention. In the constituent treaties of the European Community, references to the "ECU" were replaced by references to the "euro" (something quite different) by a decision embodied in the Conclusions of the Meeting of Heads of State and Government of the 15 member States at Madrid in 1995.[11]

28. Therefore, it seems that the procedure followed by the Meeting of States Parties regarding the postponement of the election of the members of the Tribunal in 1994, and of the members of the Commission in 1995, being the simplest to undertake, could also be considered as an option for the postponement of the date from which the 10-year time period for the submissions to the Commission begins to run.

Possible starting dates for calculating the 10-year time limit

29. If the States Parties would be willing to reconsider the date from which the 10-year time period begins to run, there are several dates other than the entry into force of the Convention for the given State which appear to have merit as the starting date of this period. The first two dates derive from the delay in the establishment of the Commission. The other two reflect the dates of the preparedness of the Commission to consider the potential submissions.

30. It should be recalled that the election of the 21 members of the Commission took place on 13 March 1997. On 16 June 1997, the newly elected members of the Commission undertook their solemn declaration and the Commission began its work. If the delay in the election and the beginning of the functioning of the Commission is to be taken into account, then two dates appear to be possible starting points:

- The date of the election of the members of the Commission: 13 March 1997;
- The date on which the Commission members took the oath of office, which marks the first day of the actual functioning of the Commission: 16 June 1997.

31. Theoretically the Commission would have been ready to start the consideration of any submission received on the first day of its first session. However, as must any other newly elected international body, the Commission had to organize and prepare itself for the performance of its functions. It had to elect its officers, adopt its rules

[11] These and other examples are discussed in A. J. Aust, *Modern Treaty Law and Practice* (Cambridge University Press, 2000), pp. 191-193 and 212-214.

of procedure and agree upon certain scientific and technical criteria to be used in considering the submissions. Therefore, the other two possible dates might be:

- The date of the provisional adoption of the Scientific and Technical Guidelines of the Commission (CLCS/L.6): 4 September 1998;
- The date of the final adoption of the Guidelines (CLCS/11): 13 May 1999.

32. The reason for choosing the third or fourth date would be that the adoption of the Guidelines marked the completion of the three basic documents of the Commission, the other two being the Rules of Procedure (CLCS/3) and the Modus Operandi of the Commission (CLCS/L.3).[12] It is these basic documents, especially the Scientific and Technical Guidelines, that give clear and detailed indications to States as to the procedures to be followed in the preparation of the submission to the Commission, and as to the particulars that would be expected to be included in the submission.

V. Time needed for the Commission to consider a submission

33. With only three years left until 2004, when the 10-year time period expires for the first group of States to make their submissions to the Commission, two other time elements are of special significance: the time which the State will require to collect the necessary data and information and prepare its submission, and the time the Commission will have to spend for consideration of each submission. The first depends, inter alia, on the volume and quality of scientific data already available for each specific region of the ocean, on the length of the coastline, the amount of data to be collected, the geomorphologic features of the continental margin and other technical elements. The second — the length of time the Commission needs to process a submission — depends on the complexity and volume of the material the Commission will have to study and analyse and whether there are other submissions to be considered at the same time. Until the first submission is received and considered and the recommendations are adopted, only rough estimates of the time the Commission may need for this can be made, and those estimates vary from three weeks to two months, or even longer.

34. Since each subcommission to be formed to deal with a submission will be composed of seven members, only three subcommissions could operate at any one time, unless members of the Commission could serve on more than one subcommission at a time, which does not appear to be an impossibility. This could mean that every member of the Commission would have to be on full-time leave from his or her ordinary functions for almost an entire year.

35. If the starting date for calculation of the 10-year deadline is shifted, for example, from 16 November 1994 to 16 June 1997, this might facilitate the situation for those States that would not be able for various reasons to complete the preparation of their submissions before 16 June 2007. However, such a

[12] Both the Modus Operandi and the Rules of Procedure were adopted on 12 September 1997. At that point in time, however, not all provisions in the annexes to the Rules enjoyed consensus among the members of the Commission. Regarding annex II, "Confidentiality", the Commission stated that it would adopt this annex only if and when the issue of the privileges and immunities of its members in dealing with confidential material and in the exercise of all their other functions were resolved positively. The annexes were adopted on 4 September 1998.

postponement would not change the deadlines for those States for which the Convention has entered into force after 16 June 1997. For those States the calculation of the 10-year period would start on the day the Convention has entered into force for each of them.

36. But all this would make no difference to the Commission, for the simple reason that under this scenario members of the Commission would have to consider submissions and prepare the recommendations for the first 14 States within one year, be it in 2004 or 2007. Would the Commission be able to perform such a task within a single year? Would it be conducive to the quality of the work if one member of the Commission had to serve on several subcommissions at the same time?

VI. Reason for a coastal State to make a timely submission to the Commission

Nature of the rights of the coastal State over the continental shelf

37. Under international law, the rights of a coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation. UNCLOS article 77, entitled "Rights of the coastal State over the continental shelf",[13] is almost identical to article 2 of the Geneva Convention of 1958 in recognizing the sovereign rights enjoyed by the coastal State for the purpose of exploring the continental shelf and exploiting its natural resources.

38. Among other decisions on the continental shelf cases, in the *North Sea Continental Shelf* judgment,[14] the International Court of Justice made an unqualified reference to a coastal State's entitlement to the submarine areas constituting a natural prolongation of its land territory into and under the sea; this right exists as a matter of well-established international law regardless of whether the coastal State is party to any international convention on the matter.

39. Under the 1982 Convention, the continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from

[13] Article 77 reads as follows:

"1. The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources.

"2. The rights referred to in paragraph 1 are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.

"3. The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.

"4. The natural resources referred to in this Part consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species, that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil."

[14] *I.C.J. Reports 1969*, p. 22.

which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.[15]

40. It seems that the provisions of the 1982 Convention concerning the continental shelf have gained wide acceptance: several of the more than 20 coastal States which are not parties to either the Convention on the Continental Shelf, adopted in Geneva on 29 April 1958, or the 1982 Convention, and some of the coastal States which are parties to the 1958 Convention but not the 1982 Convention, have determined in their national legislation that the outer limits of their continental shelf extend up to 200 nautical miles or up to the outer edge of the continental margin.[16] However, for States non-parties to the Convention to attempt to do the same with their continental shelf beyond 200 nautical miles would be equivalent to trying to obtain the benefits of the Convention without being willing to accept the responsibilities incumbent on them, namely the requirement to make a submission to the Commission, as well as to pay the duties specified in article 82.

41. The Convention requires the coastal State to submit to the Commission on the Limits of the Continental Shelf information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of the continental shelf of those States. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.

42. Since the right to the continental shelf does not depend on any express proclamation, it cannot be affected by the failure of the coastal State to make its submission to the Commission in accordance with the required 10-year time period. It seems, however, that the exercise of the sovereign rights of the coastal State over that portion of its continental shelf which extends beyond 200 nautical miles would be impeded until such time when a final determination of the outer limits would be made in accordance with the Convention. The rights of the coastal State over the continental shelf are not contested. What is to be determined is the geographical extent of the exercise of those rights.

Benefits from making such a submission

43. In the light of the foregoing, there is a compelling reason for the coastal States to make submissions to the Commission in the manner laid down in the Convention. By establishing the Commission, the Convention accorded to the coastal State a special procedure for establishing the outer limits of the submarine continuation of the continent where its land territory is located, by a means that would be legally

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[15] It should be borne in mind, however, that when the Court pronounced itself on that issue in 1969 the notion of the continental shelf was different from the one defined in article 76 of the Convention, which was adopted in 1982. By not asking the State to provide evidence of the continental nature of the submarine areas up to 200 nautical miles from the baselines, the Convention relieved the coastal State of the necessity of proving, in accordance with the Court's decision, that this, in some cases, huge area is its submarine continental territory, "an extension of its land territory". In so doing, the Convention gave a State the right to exploit its deep seabed areas up to 200 nautical miles from its coast as if it were its geological continental shelf. It is only beyond 200 nautical miles that the coastal State has the obligation to prove that its submarine land territory extends beyond 200 nautical miles.

[16] See A/56/58, annex II, "Summary of national claims to maritime zones".

accepted and respected by all States Parties to the Convention. There is no other legal means to accomplish that aim.

44. The absence of an internationally recognized outer limit of the continental shelf beyond 200 nautical miles from the baselines in any area may afford a lesser degree of precision as to the area under the jurisdiction of the coastal State. For a State to include in its national legislation the general phrase that its continental shelf extends to the outer edge of the continental margin might sound legally correct, but it does not locate the exact position of that outer edge which would be internationally recognized only when considered and recommended by the Commission, accepted by the State, and then incorporated into its national legislation: "The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding."[17]

45. The Convention does not state that the coastal State loses its right to the continental shelf beyond 200 nautical miles if it does not make a timely submission to the Commission. The Convention offers a means to do two things not provided for by customary law. First, it accords a coastal State a "legal" continental shelf up to 200 nautical miles without asking for any evidence that the shelf exists on geological or geomorphologic grounds — the evidence required for the sea floor to be identified as a submerged continuation of the land territory of a particular State. Second, the Convention permits a coastal State to establish the outer limit of its continental shelf even beyond 200 nautical miles, but in this case upon provision of certain scientific data, with these data to be submitted to the Commission within a 10-year time limit specified in the Convention. The extended legal continental shelf, with an additional 60 to 100 nautical miles past the edge of the continental margin, and with boundaries marked as "final and binding" — two benefits extended by the Convention — are the major impetus for States to submit the particulars of the outer limit line of the continental shelf to the Commission.

46. The legal uncertainty may hinder the activities to be undertaken in the international seabed area and raise the issue of the payments and contributions which the coastal State should make annually with respect to all production after the first five years of production at the site on its continental shelf located beyond 200 miles.[18] In addition, until the outer limits are established so that they are final and binding, the requirement for their establishment being that the outer limits are determined "based on the recommendation of the Commission", States with opposite or adjacent coasts are not in a good position to negotiate their joint boundaries in the area beyond 200 miles.

47. Therefore, the expedient determination of the outer limits of the continental shelf beyond 200 nautical miles is beneficial for all States, and not only for those which possess such a shelf.

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[17] Article 76 (8) of the Convention.

[18] According to article 82, a coastal State must make payments and contributions annually with respect to all production after the first five years of production at the site on its continental shelf located beyond 200 miles, and: "For the sixth year, the rate of payment or contribution shall be 1 per cent of the value or volume of production at the site. The rate shall increase by 1 per cent for each subsequent year until the twelfth year and shall remain at 7 per cent thereafter." The payments or contributions shall be made through the Authority, "which shall distribute them to States Parties to this Convention, on the basis of equitable sharing criteria, taking into account the interests and needs of developing States, particularly the least developed and the land-locked among them".

VII. Partial submissions

48. The term "partial submission" arose during discussions in the Commission of the potential situations where a coastal State might make a submission to the Commission in respect of its extended continental shelf, a portion of which might be under dispute with a neighbouring or opposite State. Article 9 of Annex II to the Convention unequivocally states that "the actions of the Commission shall not prejudice matters relating to delimitation of boundaries between States with opposite or adjacent coasts". Being aware that the mandate of the Commission excludes these matters from its competence, the members of the Commission nevertheless had to agree on rules to be followed by the Commission in case the submission addressed to it includes the areas under dispute.

49. Bearing this in mind, the Commission included in its Rules of Procedure (CLCS/3/Rev.3) an annex I, entitled "Submissions in case of a dispute between States with opposite or adjacent coasts or in other cases of unresolved land or maritime disputes". From the outset the Commission emphasized that it is not within its competence to deal with disputes between States. Paragraph 1 of the annex unequivocally states that:

> "The Commission recognizes that the competence with respect to matters regarding disputes which may arise in connection with the establishment of the outer limits of the continental shelf rests with States."

50. In order to emphasize that it intends to avoid dealing not only with the "matters relating to delimitation of boundaries between States with opposite or adjacent coasts",[19] but with any other disputes, the Commission made its position even more definite by adding to the case referred to explicitly by the Convention the words "or other cases of unresolved land or maritime disputes". Paragraph 2 of annex I of the Rules of Procedure of the Commission reads:

> "2. In case there is a dispute in the delimitation of the continental shelf between opposite or adjacent States, or in other cases of unresolved land or maritime disputes, in relation to the submission, the Commission shall be:
>
> (a) Informed of such disputes by the coastal States making the submission;
>
> (b) Ensured by the coastal States making the submission to the extent possible that the submission will not prejudice matters relating to the delimitation of boundaries between States."

51. Paragraph 3 stipulates that "a submission may be made by a coastal State **for a portion of its continental shelf** [emphasis added] in order not to prejudice questions relating to the delimitation of boundaries between States in any other portion or portions of the continental shelf for which a submission may be made later, notwithstanding the provisions regarding the 10-year period established by article 4 of Annex II to the Convention".

52. Paragraph 4 provides for joint or separate submissions requesting the Commission to make recommendations by agreement either without regard to the delimitation of boundaries between those States, or having indicated by means of

[19] Article 9 of Annex II to the Convention.

geodetic coordinates the extent to which a submission is without prejudice to the matters relating to delimitation of boundaries with another or other States Parties to the agreement.

53. Paragraph 5 provides for the Commission to examine one or more submissions in the areas under dispute only with prior consent given by all States that are parties to such a dispute, and only if the submissions by the States and recommendations by the Commission do not prejudice the position of States with are parties to a land or maritime dispute.

54. In all the above-mentioned cases the coastal State is allowed to make a submission covering less than the entire outer limit of its extended continental shelf; it may submit that portion which is free of any unresolved maritime or land disputes with other States. However, these provisions apply only when the submission in respect of the entire line forming the outer limits of the continental shelf cannot be made because part of the shelf is under dispute, and only for that portion which is disputed.

55. The question arises as to the possibility of cases other than those involving a dispute which might justify the Commission's accepting an incomplete submission. It should be noted that partial submissions were not addressed explicitly by the negotiators of the Convention, nor were they prohibited.

56. It seems that in practice, despite good-faith efforts of the coastal State to make a submission, technical difficulties may lead to a partial submission. These may include environmental dangers and uncertainties in gathering data using traditional available methodologies, or uncertainties resulting from the geophysical structure of the continent (e.g. ice-covered areas[20]). Extreme weather conditions, or unavailability of affordable technical assistance in the areas which are very difficult to access, may pose a problem preventing the submission of the full data concerning the continental shelf.

57. There could be other difficulties of an economic, financial or technical nature. For example, a developing State may have some information which would be sufficient for the standards set in article 76, and elaborated upon in the Scientific and Technical Guidelines, along parts of its outer limit, e.g., information of a bathymetric nature. However, let us say that the State has reason to believe that along a portion of that outer limit, sediment thickness readings would yield a line further seaward, but the State had not had the technical ability, money or time to take the core samples which would verify the further seaward line. May the State, in order to comply with the 10-year time limit, put in the submission, with a caveat that it is still attempting to confirm that a further seaward line between points A and B would be the real outer limit to which it would be entitled under article 76? Will the Commission then consider the rest of the submission, pending confirmation of the data regarding the section between points A and B?

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[20] For example, it is very difficult to obtain the seismic data giving thickness of sedimentation in ice-covered areas, since seismic profiling cannot be carried out over areas covered by permanent ice pack in the same manner as in open water (see *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. IX (United Nations publication, Sales No. E.79.V.3), Documents of the Conference, document A/CONF.62/C.2/L.98).

58. Although the Commission has not spoken on this point, it has been observed by the participants at the Open Meeting of the Commission on 1 May 2000 that there is no provision in the Convention to preclude the coastal State from making a partial submission, pending further elaboration or submission of supplemental information. In fact, the consideration of the Commission may result in a recommendation to the State to modify parts of its outer limit line, or the Commission may request further information about certain sections of the outer limits. The State is then given the opportunity to revise the recommendation and re-submit it to the Commission, in accordance with article 8 of Annex II to the Convention, which states: "In the case of disagreement by the coastal State with the recommendation of the Commission, the coastal State shall, within a reasonable time, make a revised or new submission to the Commission." It may be supposed that the same "reasonable time" provision applies to the provision of further information requested by the Commission. It could seem reasonable then that the State may submit the best information it has available before the expiration of its 10-year time limit, with the caveat that it will be submitting further information, and be deemed to have made a submission within the required 10-year time limit without prejudice to its rights to define the outer limit of its continental shelf.

VIII. Actions taken by the Commission, the Meeting of States Parties and the General Assembly to assist States with respect to the scientific and technical expertise required in preparing submissions to the Commission

59. The first issue raised by the tenth Meeting in this context was regarding the possible means by which assistance could be provided with respect to the scientific and technical expertise required by those States preparing submissions, particularly developing countries, and especially the least developed among them, to enable them to prepare a well-researched submission to the Commission.

60. It may be recalled that one of the functions of the Commission on the Limits of the Continental Shelf is to provide scientific and technical advice, if requested by the coastal State concerned during the preparation of the data and other material concerning the outer limits of its continental shelf in areas where those limits extend beyond 200 nautical miles. At its first session, the Commission elected a Standing Committee to deal with such requests and provide such assistance (CLCS/1, para. 14).

Training

61. The Commission, aware of the highly complex nature of the Guidelines, decided to take two important steps to assist coastal States in applying them. The first was to hold an open meeting, which took place on 1 May 2000. The second was to design an outline for a five-day training course.

62. The open meeting was held in New York on the first day of the seventh session of the Commission (1-5 May 2000). It was aimed at flagging the most important issues related to the establishment of the continental shelf beyond 200 miles, and was intended also to give a general indication to policy makers and legal advisers of

the benefits that a coastal State might derive from the valuable resources of the extended continental shelf, and to explain to experts in marine sciences who were involved in the preparation of submissions how the Commission considered that its Scientific and Technical Guidelines should be applied in practice. Approximately 100 government officials, members of intergovernmental organizations, legal advisers and experts in marine sciences related to the establishment of an extended continental shelf attended the meeting (CLCS/21, paras. 4-5).

63. The outline for a five-day training course was finalized at the eighth session of the Commission (31 August-4 September 2000). It was preceded by a basic flowchart for the preparation of a submission to the Commission (CLCS/22). The major goal of the outline was to aid States, especially developing States, in further acquiring the knowledge and skills to prepare a submission.

64. Since it is not part of the mandate of the Commission to conduct or organize training, the suggested course could be developed and delivered by interested Governments and/or international organizations and institutions that possess the necessary facilities and pedagogic and subject expertise. The aim of the outline developed by the Commission is to facilitate the preparation of submissions in accordance with the letter and spirit of the Convention, as well as with the Guidelines of the Commission. It is expected that courses offered using a standard outline would help ensure a uniform and consistent practice in the preparation of submissions to the Commission. In fact, one course has already been given, using the outline prepared by the Commission.[21]

65. The five-day training course produced by the Commission could also be adapted by interested educational institutions to the particular needs of coastal States at the regional level, which would have several practical advantages. Offering courses to be held in, and designed for, specific regions would be cost-effective for developing countries in the particular region. Such courses may take into account the wide variety in types of continental margins in different areas of the oceans, as well as the ways of applying the criteria contained in the Convention.

Establishment of voluntary trust funds

66. It may be recalled that the tenth Meeting of States Parties recommended to the General Assembly at its fifty-fifth session the establishment of two voluntary trust funds related to the establishment of an extended continental shelf in accordance with the provisions of article 76 of the Convention (SPLOS/58 and 59). Both trust funds were established by the General Assembly in its resolution 55/7 of 30 October 2000 (paras. 18 and 20).

67. The first fund was to provide assistance to States Parties to meet their obligations under article 76 of the Convention, as well as training to countries, in particular the least developed among them and small island developing States, for preparing submissions to the Commission with respect to the outer limits of the continental shelf beyond 200 nautical miles. The second fund was established to

[21] A five-day training course on the delineation of the outer limits of the continental shelf beyond 200 nautical miles was held in Southampton, United Kingdom, from 26 to 30 March 2001. It was offered jointly by the Southampton Oceanography Centre and the Hydrographic Office of the United Kingdom.

enable members of the Commission from developing countries to participate fully in the work of the Commission.

68. Of the two, it is only the first fund that is related to the issue of scientific and technical assistance to developing States. The purpose of the fund is: (a) to provide assistance to States Parties to meet their obligations under article 76 of the Convention, and (b) to provide training to countries, in particular the least developed among them and small island developing States, for preparing submissions to the Commission with respect to the outer limits of the continental shelf beyond 200 nautical miles, as appropriate (SPLOS/59). A contribution of US$ 1 million has been made by Norway to the fund, and the United Nations is taking the steps required for its practical operation. In its resolution 55/7, the General Assembly invited not only States, but also intergovernmental organizations and agencies, national institutions, non-governmental organizations and international financial institutions, as well as natural and juridical persons, to make voluntary financial or other contributions to the fund. The terms of reference of the fund are contained in annex I to the resolution. The impending deadline for submissions to the Commission of November 2004 for many developing States has lent a sense of urgency to the establishment and use of this fund.

69. The fund may be used to provide training to the appropriate technical and administrative staff of the coastal State making a submission to enable them to carry out initial desktop studies and project planning, as well as to prepare the final submission documents after the necessary data have been acquired. The fund may be used as well to provide for advisory assistance or consultancies, if needed.

70. The preparation of the submission documents must be in conformity with the provisions of article 76 and Annex II to the Convention (and, as appropriate, Annex II of the Final Act of the Third United Nations Conference on the Law of the Sea) and the Scientific and Technical Guidelines of the Commission. The training provided should take these requirements into account and should aim at enabling the State's personnel to prepare most of the required documents themselves. The preparation of the submission to the Commission may entail other costs that may be met through the fund (e.g., software and hardware equipment, technical assistance, etc.).

IX. Conclusion

71. There appear to be several possibilities for dealing with the issue of the 10-year time limit, e.g., to revise its duration, to change the starting date on which the 10-year time limit begins to run, or to accept the possibility for the Commission to receive "partial" submissions that could be supplemented by the coastal State within a reasonable time.

72. The Meeting of States Parties may wish to consider a procedure similar to that followed for postponing the election of the members of the Tribunal and of the members of the Commission, that is, by "general agreement", which is discussed in chapters III and IV above. However, in considering this option States Parties should recall that the decisions in 1994 and 1995 were on matters of an organizational nature, taken before the members of the Tribunal and the Commission were elected. Today the Commission is fully established and operational.

73. Should a "general agreement" appear unattainable or inappropriate, it should be borne in mind that to agree upon some of the options listed above might entail the application of the legal procedures specified in articles 312 (Amendment) or 313 (Amendment by simplified procedure). It should be recalled that, if article 313 is applied, should any State Party object to the proposed amendment within 12 months of its circulation, the amendment will be considered rejected.

74. Other options, such as the acceptance of partial submissions, do not require any amendment to the Convention, and do not seem to be at variance with the provisions of the Convention. However, the Commission should have the option of not accepting for consideration a submission that appears to be so bereft of data and material relevant to the outer limits that it cannot proceed with a genuine evaluation of the outer limit line. The Commission should also have flexibility in deciding when to consider a submission, including the ability to defer its consideration, upon the request of a submitting State, should the members of the Commission agree to do so, in order to permit the collection of supplementary data, or for other reasons. The Meeting might wish to consult the Commission before taking action on this matter.

75. In considering whether it is in the interests of international stability to force States to adhere to the 10-year time limit, it might be advisable to note that several States with apparently very extensive areas of continental shelf beyond 200 nautical miles have not yet ratified the Convention (e.g., Canada, Denmark, United States of America). As of now there is no clear notion of the year in which their deadline will fall. Since they will not be faced with a time limit until they do ratify or accede to the Convention, a great deal of the area which would fall under the extended continental shelf, for which the firm delineation of its outer limits is important, will probably not be stabilized at least within the next decade.